

Community and Property

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COMMUNITY PROPERTY

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The property rights of married women have undergone a radical change from that which existed at the common law. They were first modified by the equitable doctrine of sole and separate estate, and secondly, by legislation. The second half of the nineteenth century saw almost a complete revolution effected in this branch of the law; the general purpose of this legislation was to relieve married women of the hardships of the common law and its effect has been to place the wife in a condition of entire independence and complete equality with her husband with respect to property rights. In some states the revolution is more complete and radical than in others. In Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington, what is called the system of community property has been established.

The general principle on which the system of community property is founded is that all of the property acquired by the industry of either husband or wife or both, and the increment or product of such property belongs to both husband and wife during the continuance of the married relation and upon the death of either party the title to one-half thereof vests in the survivor, and the title of the other half vests in the heirs or devisees of the deceased spouse.

This so-called community or partnership system came from Europe and prevailed in France, Spain and Holland, and in their colonies. It was brought to Louisiana and Quebec by France, and to Porto Rico and New Mexico by Spain.

Under the community system generally the separate property of either husband or wife owned before marriage, together with the increase or profit thereon and all property purchased therewith remains separate property of the husband or wife respectively, but all property conveyed to either husband or wife after marriage unless purchased with separate property becomes community property; the earnings of both parties and all damages recovered for personal injuries to either go into the community fund. Generally the wife has control of her separate property as in Wisconsin, but the husband has the right of control, use, and transfer of the community property subject to the limitation that he must exercise the right in good faith and not with intent to

defraud the wife of her rights; the husband also has the right to sue in his own name in all actions at law affecting the property.

In Arizona the statutes bearing upon the community property system in that state are articles 3850, 1100, 2061 and 3848. The Supreme Court of the State of Arizona has held these statutes established in the wife an equal interest with the husband in the community property in that state. In the case of *LaTourette vs. LaTourette*, 15 Ariz. 200, the court said after reviewing the statutes:

"The law makes no distinction between the husband and wife in respect to the right each has in the community property. It gives the husband no higher or better title than it gives the wife. It recognizes a marital community wherein both are equal. Its policy plainly expressed is to give the wife in this marital community an equal dignity and make her an equal factor in matrimonial gains. * * * That the interest of the wife in the community property during the coverture is not a mere possibility—not the expectancy of an heir—is quite apparent. The old saying is not true that community is a partnership which begins only at its end. Upon the dissolution of the community, by death, the wife does not inherit her share of the common property, but with the death of the husband the management and control of the statutory agent or trustee ceases. The wife acquires not her share, for that was already hers, but in addition to her share she acquires the right of management, control, and disposition of that share. Her status being thereby fixed as that of a *femme sole*. If there be no child or children of the deceased husband, all of the common property goes to the surviving wife. She has her share in the property and in addition, by right of survivorship and not as an heir, she acquires the share that belonged to the husband, and she takes all of the property in her own right, and with respect to the management, control, and disposition of such property is reduced to the status of a *femme sole* and must thenceforth with respect to it act for herself."

The Idaho statutes bearing upon the community property system in that state are articles 4056, 4659, 4666, 4667, and 5713. The Idaho law provides that all property of the wife owned by her before marriage and that acquired afterwards by gift, bequest, devise or descent, or that which she shall acquire with the proceeds of her separate property, shall remain her sole and separate property to the extent and with the same effect as the property of her

husband similarly acquired, but all other property acquired after marriage by either husband or wife including the rents and profits of the separate property of the husband and wife unless by the instrument by which any such property is acquired by the wife, it is expressly provided that the rents and profits thereof be applied to her sole separate use. The husband has the management and control of the community property, but he shall not sell, convey, or encumber the same unless the wife join with him in executing the deed or other instrument, and upon the death of either, one-half of the community property goes to the survivor subject to the community debts, and the other one-half is subject to the testamentary disposition of the deceased husband or wife as the case may be. In *Ewald vs. Hufton*, 31 Idaho 373, 173 Pac. 247, the Supreme Court of Idaho said that under the laws of Idaho no distinction is made between husband and wife as to the degree, quantity, nature, or extent of the interest each has in community property, and held that upon the dissolution of the community by the death of either spouse the survivor becomes tenant in common with the heirs of the deceased member. In *Kohny vs. Dunbar*, 21 Idaho 258, 121 Pac. 544, the Supreme Court of Idaho fully considered the respective interests of husband and wife under the Idaho Statutes and recognized the husband and wife as equal partners in the community estate and authorized each to dispose of his or her half by will. The court said:

"This statute clearly and unmistakably provides that the surviving spouse takes his or her half of the community property not by succession, descent, or inheritance, but as survivor of the marital community or partnership * * * since the interest of both husband and wife are the same and equal in and to the community property."

Neither is obliged to pay an inheritance tax under the laws of that state on his one-half of the property.

The Statutes of Louisiana bearing on this question are articles 915, 916, 2332, 2334, 2385, 2386, 2399, 2402, 2404, and 2406, and the courts of Louisiana have interpreted the statutes in the case of *Succession of Marshall*, 118 La. 211; *Succession of May*, 120 La. 691; *Dixon vs. Dixon's Executors*, 4 La. 188, and *Beck vs. Natalie Oil Company*, 143 La. 154. In *Beck vs. Natalie Oil Company*, *Supra*, the court said:

"The property involved in this suit was acquired by the father of plaintiffs while the community of acquet and gains existed be-

tween him and the mother of the plaintiffs, and the mother of the plaintiffs as partner in community, became owner of one-half of it. This one-half the plaintiffs inherited from their mother, subject to the payment of the debts of the community."

In New Mexico the significant portions of the statutes bearing upon the community property system of that state are Sections 2757, 2758, 2764, 2766, 2767, 2770, 2774, 2781, 1840, and 1841. In the case of *Beals vs. Ares*, 185 Pac. 780, the Supreme Court of New Mexico carefully reviewed the history of the community property system in New Mexico arriving at the following conclusions:

(1) That under the law in this jurisdiction the wife's interest in the community property is equal with that of the husband; that, while he is by statute made the agent of the community and given dominion and control over the community property during the continuance of the marriage relation, his interest in the property by reason of such fact is not superior to that of his wife.

(2) That the wife does not forfeit her interest in the community property by the commission of adultery.

(3) That there is no statute in this state conferring upon the district court the power to divide the community property between the parties at its discretion; that, while it has power to divide the property, this power does not extend further than to set apart to each of the spouses their undivided one-half interest in the property.

The court further says that the statutes clearly recognized an existing present interest in the wife during the existence of the matrimonial status and further recognizes that this interest continues even after divorce where the property is not divided by the decree in the divorce case.

The significant portions of the Nevada statutes bearing upon the community property system in that state are Sections 2155, 2156, 2160, 2164, 2165. *In re Williams*, 40 Nev. 241, the Supreme Court of Nevada interpreted the above statutes and defined the interest of husband and wife in community property. The court said:

"It may we think, be asserted, supported by the great weight of authority that the interest of the wife in community property and her title thereto is no less than that held by the husband, and this interest and title in the wife is not to be regarded as a mere expectancy."

And the court finally concluded in this case that the wife's interest was not subject to the law of inheritance tax of that state.

The statutes of Washington bearing upon the community property are found in *Pierce's Washington Code* of 1919, and are as follows:

Sections 1424, 1428, 1432, 1433, 1434, 1435, and 1436. It appears the settled law of that state that the wife has during coverture as well as upon dissolution of marriage a vested and definite interest and title in community property equal in all respects. *Holyoke vs. Jackson*, 3 Wash. 235; *Mabie vs. Whittaker*, 39 Pac. 172; *Marston vs. Rue*, 159 Pac. 111; *Schramm vs. Steele*, 166 Pac. 634; *Huyrarts vs. Roetz*, 178 Pac. 801.

The statutes of California bearing upon community property are found in the following sections of the Civil Code:

Sections 162, 163, 164, 172, 172-a, 1401, and 1402.

While the statutes of California are in some respects similar to the community property laws of the other community property states, the rule established by the highest courts of that state is that during coverture the wife has no vested interest in the community property, her interest therein being a mere expectancy as was said in *Spreckles vs. Spreckles*, 116 Cal. 339.

"If a husband can make a valid transfer of the property for the purpose of depriving his wife of it, that does not show a vested right in her."

However, there has been some question raised since this decision by reason of the passage of Section 172-a which provided:

"That for the purposes of this act," the one-half of the community property which goes to the surviving wife on the death of her husband, "shall not be deemed to pass to her as heir to her husband, but shall, for the purpose of this act, be deemed to be passed, or transferred to her for valuable and adequate consideration."

As to what effect this statute will have upon the rights of the wife in California is still open to judicial construction.

In Texas by statute, the ownership in one-half of all community property vests in each spouse, and it further provides that the control of the community property is divided between the husband and wife. In that state on the death of either spouse without issue the survivor takes the whole and where there is issue, takes one-half, the other one-half going to said issue or their descendants.

Summarizing, it appears that in all of the community property states except California, it has been held that the wife has, during the existence of the marriage relation, a vested interest in one-half of the community property. Her rights in the property of the community are perhaps most fully recognized in the State of Washington where both spouses have testamentary disposition over one-half of the community property, and where in the absence of such disposition it descends to their issue, or in the absence of issue to the survivor, and the separate debts of the husband cannot be satisfied out of the community property where it is not incurred in connection with the community business nor for the benefit of the community.